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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91205331
Party	Defendant Kerry Earnhardt, Inc.
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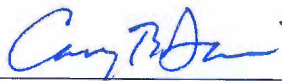
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Teresa H. Earnhardt,	§	Consolidated Opposition Nos.
	§	91205331 (parent) and 91205338
Opposer,	§	
	§	In the matter of:
vs.	§	
	§	Application Serial No. 85/383,910
Kerry Earnhardt, Inc.	§	Mark: EARNHARDT COLLECTION
	§	(Intl. Class 20)
Applicant,	§	
	§	Application Serial No. 85/391,456
	§	Mark: EARNHARDT COLLECTION
		(Intl. Class 37)

APPLICANT'S NOTICE OF FILING OF THE TRANSCRIPT
OF THE TESTIMONY PERIOD DEPOSITION
OF KERRY DALE EARNHARDT

PLEASE TAKE NOTICE that Kerry Earnhardt, Inc. ("Applicant") hereby files the transcript of the October 23, 2014, testimony period deposition of Kerry Dale Earnhardt.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing “Applicant’s Notice of Filing of the Transcript of the Testimony Period Deposition of Kerry Dale Earnhardt” and the accompanying materials were duly served on Opposer by depositing copies of same in the United States mail, first-class postage prepaid, on the 5th day of December, 2014 addressed to Opposer’s attorneys of record as follows:

Larry C. Jones
Bruce J. Rose
Clara H. Clements
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Cary Baxter Davis

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

- - - - -X Consolidated Opposition No.

Teresa H. Earnhardt, : 91205331 (parent) and

Opposer, : 91205338

: In the Matter of:

v. : Application Serial

: No. 85/383,910

Kerry Earnhardt, : Mark: EARNHARDT COLLECTION

Inc., : (Intl. Class 20)

Applicant. : Application Serial

- - - - -X No. 85/391,456

Mark: EARNHARDT COLLECTION

(Intl. Class 37)

Deposition of KERRY DALE EARNHARDT

(Taken by Applicant)

Charlotte, North Carolina

October 23, 2014

Reported by: Andrea Nobrega

Court Reporter

Notary Public

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21

Also Present: RENE CLINE EARNHARDT

22

23 Deposition of KERRY DALE EARNHARDT,
taken by the Applicant, at 100 North Tryon
24 Street, Charlotte, North Carolina, on the
23rd day of October 2014 at 10:27 a.m.,
before Andrea L. Nobrega, Notary Public
25 and Court reporter.

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1 P R O C E E D I N G S

2 Whereupon, KERRY DALE EARNHARDT, having
3 been first duly sworn, was examined and
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. DAVIS:

7 Q. Good morning. How are you doing?

8 A. Doing fine, thank you.

9 Q. Could you state your name for the
10 record, please?

11 A. Kerry Dale Earnhardt.

12 Q. And where do you live?

13 A. Mooresville.

14 Q. And describe your family for me,
15 please?

16 A. My family is myself and my wife,
17 Rene, and our four children, Bobby,
18 Jeffrey, Blade and Kayla.

19 Q. And when you refer to your family,
20 are those the folks that you are referring
21 to?

22 A. Yes, sir.

23 Q. Where do you work?

24 A. At Kerry Earnhardt, Inc.

25 Q. And can we agree that we are going

1 to call that KEI?

2 A. Okay, good.

3 Q. Thank you. And what is your
4 position at KEI?

5 A. I am the co-founder and CEO.

6 Q. Does your wife, Rene, also work
7 for KEI?

8 A. Yes, sir. She is president.

9 Q. And is there a difference between
10 what you do as CEO and what Rene does as
11 president?

12 A. Yes. I am involved in the daily
13 decisions or in the decisions made with my
14 partnerships with business or any kind of
15 the licensing stuff, but my wife does all
16 the everyday nitty-gritty stuff.

17 Q. And I'm going to switch and just
18 talk briefly about your role with The
19 Earnhardt Collection, okay?

20 A. Okay.

21 Q. And this case is about KEI's
22 application for The Earnhardt Collection
23 trademark and Teresa Earnhardt's
24 opposition of that application.

25 Is that your understanding of what

1 this case is about?

2 A. Yes, sir.

3 Q. And what is your connection to
4 Teresa Earnhardt?

5 A. I am her stepson.

6 Q. And Mr. Earnhardt, can you tell
7 the TTAB what The Earnhardt Collection is?

8 MR. ROSE: Objection to the form.

9 THE WITNESS: The lifestyle brand
10 that my wife, Rene, and myself along with
11 our children for the love and passion of
12 the outdoors have built.

13 BY MR. DAVIS:

14 Q. And can you tell the TTAB the role
15 that you have had with The Earnhardt
16 Collection?

17 A. As far as involvement of The
18 Earnhardt Collection brand?

19 Q. Sure, your involvement in that.

20 A. I have just been behind all the
21 decision -- my wife would do all the
22 nitty-gritty work of it and then bring it
23 to me and I would agree to it or disagree
24 with it.

25 Q. Have you been involved with some

1 of the marketing with The Earnhardt
2 Collection?

3 A. Yes, I have.

4 Q. Have you made appearances in
5 connection with The Earnhardt Collection?

6 A. Yes, we have done many appearances
7 and we have also done radio and TV ads,
8 and we have done interviews with magazines
9 and newspapers.

10 Q. Has your involvement also included
11 working on the design for the 24 different
12 homes that comprise The Earnhardt
13 Collection?

14 A. Yes, yes, sir. Me and my wife,
15 Rene, have flown to Ohio to meet with the
16 Schumachers and their architectural team,
17 and it was a pretty amazing opportunity.

18 We got down there and a bunch of
19 people in a room like this, but a lot
20 bigger table. I think there was
21 20-something people there.

22 Me and my wife sat down and gave
23 all our ideas and things we like to see
24 inspired in The Earnhardt Collection homes
25 and put it all together.

1 Q. Okay, good. And did you approve
2 the collection of The Earnhardt Collection
3 as the trademark for the brand you and
4 Rene are building?

5 A. Yes, I did.

6 Q. And in doing that, did you think
7 that The Earnhardt Collection might be
8 confused as being associated with your
9 father, Dale Earnhardt?

10 MR. ROSE: Objection to the form.

11 THE WITNESS: No, sir.

12 BY MR. DAVIS:

13 Q. And why is that?

14 A. Because me and my wife have
15 specifically put our feet down -- and me
16 and my wife and our children that are all
17 published in all print, media, everything
18 and that's what it's about, our family.

19 Q. It's about your -- that brand is
20 about your family?

21 A. My family, yes.

22 Q. And your interests?

23 A. Yeah, the love of the outdoors,
24 fishing and hunting and just nature.

25 Q. And how specifically does The

1 Earnhardt Collection fit with who you are?

2 A. You know, it's about outdoor
3 lifestyle. You know, we live -- we live
4 in what we love, and that's outdoors from
5 hunting, fishing, nature, camping, hiking,
6 whatever it would be.

7 Q. And what makes The Earnhardt
8 Collection special?

9 MR. ROSE: Objection to form.

10 THE WITNESS: I think, like I
11 said, with the big windows, bringing the
12 light from the outside in, giving the
13 property owners an opportunity to see the
14 property, and take in all the nice views
15 and the wood beams and rocks that we
16 incorporate in our homes just feels like
17 nature.

18 BY MR. DAVIS:

19 Q. And beyond talking about how that
20 fits in with custom homes, how about the
21 lifestyle brand Earnhardt Collection that
22 you all are trying to build?

23 MR. ROSE: Object to the form.

24 THE WITNESS: Lifestyle brand, The
25 Earnhardt Collection is like I said, is

1 the outdoor lifestyle brand that my wife,
2 Rene, myself and along with our children
3 have the love and passion of the outdoors.

4 My daughters, they like to be
5 outside on four-wheelers, riding
6 horseback, four-wheeling or boating,
7 anything. Our sons are a whole lot of
8 that, too.

9 BY MR. DAVIS:

10 Q. And since you have been involved
11 with The Earnhardt Collection, has anyone
12 come to you and asked if The Earnhardt
13 Collection was associated with Dale
14 Earnhardt?

15 A. No, sir.

16 Q. I'm going to switch gears and talk
17 about the Earnhardt family and its
18 history, okay?

19 A. Okay.

20 Q. Who was the first Earnhardt to
21 make a name for himself in racing?

22 A. That would be my grandfather,
23 Ralph Earnhardt.

24 Q. And how did he make a name for
25 himself in racing?

1 A. He raced in numerous tracks around
2 the area, you know, Sportsman Series.

3 He was the one that you always
4 hear about when you get there and his car
5 is there, his trailer, they felt that they
6 knew that they had someone to beat.

7 He was always the one that was --
8 I remember stories of people when I raced
9 at Asheville, the new Asheville Speedway
10 up in Asheville, North Carolina, a lot of
11 racers that raced with him talked about
12 how aggressive he was and how he would
13 pretty much bully his way up to the front
14 and win races.

15 Q. And what era did he race in, what
16 years?

17 A. I would have to say '50s, late
18 '50s, early '60s.

19 Q. Did he win any championships?

20 A. Yeah, I know he has won a
21 championship in the Sportsman Division.

22 Q. After Ralph Earnhardt, who was the
23 next Earnhardt to take up a career as a
24 racer?

25 A. That's a neat story because the

1 family, they always hand things -- things
2 transpires down to the next one.

3 I hear stories of dad racing with
4 his dad and pushing him around the track.
5 I seen pictures of my granddad with dad
6 pushing him and dad's end up in the dugout
7 in Asheville.

8 So that would be my father, Dale
9 Earnhardt.

10 Q. So Dale Earnhardt, your father,
11 was the next, the second Earnhardt after
12 Ralph?

13 A. Yes.

14 Q. And what did Dale Earnhardt do in
15 racing?

16 A. He won championships, won a lot of
17 races. You know, he was seven time
18 champion.

19 Q. And then after Dale Earnhardt, who
20 was the next Earnhardt to take up racing?

21 A. That would be myself, Kelley and
22 Dale, Jr. together.

23 Q. Let's talk about you first. What
24 did you do in racing?

25 A. I have raced on a lot of NASCAR

1 level series from Late models, Goody's
2 Dash, NASCAR Craftsman Truck Series,
3 NASCAR Busch Series and also NASCAR Sprint
4 Cup Series.

5 Q. The Sprint Cup Series is the
6 highest level of NASCAR racing?

7 A. Yes, sir.

8 Q. And for how many years did you
9 race professionally?

10 A. I would say I started in 1992
11 until about 2006.

12 Q. Did you have success in pro
13 racing?

14 A. Yes, sir, I did.

15 Q. What were some of your successes?

16 A. I had several wins at a lot of
17 NASCAR tracks starting with Pocono, my
18 very first win, career win, and then also
19 Daytona -- I mean Charlotte, Michigan,
20 Atlanta.

21 Q. And have you now retired from
22 competitive racing?

23 A. Yes, sir.

24 Q. And what business interest do you
25 focus on now?

1 A. You know, this, The Earnhardt
2 Collection brand that we are building.
3 You know, like I said, our love for the
4 outdoors is trying to build a brand in the
5 outdoor industry.

6 Q. Have you ever made appearances on
7 TV shows?

8 A. Yes, sir, I have.

9 Q. Which ones?

10 A. I have done several shows with
11 Bill Jordan with Team RealTree. I have
12 also done some elk hunts with Johnny
13 Morris, founder of Bass Pro Shops and his
14 son, John Paul.

15 I was co-host on a TV show called
16 Family Traditions with Haley Heath. It
17 was all about family. My wife and our
18 kids were also on it.

19 I done some fishing shows with
20 Bill Dance, Jimmy Houston, Roland Martin
21 and also Richard Childress.

22 Q. That family tradition show, that's
23 not about the Earnhardt family, right?

24 A. No, sir, it was just -- Haley
25 Heath was from Georgia, and it was about

1 her family and she knew how family
2 oriented I was with my family, and wanted
3 us to come onboard and be partners with
4 them and co-host with it.

5 Q. It sounds like the TV appearances
6 you are describing are outdoor shows, is
7 that right?

8 A. Yes, sir.

9 Q. How long have you been making
10 appearances on outdoor television shows?

11 A. I mean it goes way back, over a
12 decade I know. If I had to put a finger
13 on it, I would say 15 years.

14 Q. And we were sort of getting back
15 to the Earnhardts who have taken up
16 careers in racing and you mentioned Ralph,
17 you mentioned your father, Dale Earnhardt,
18 yourself. Who was after you?

19 A. That would be my son, Jeffrey.

20 Q. Anybody else in your generation?
21 How bout your brother and sister?

22 A. Yeah, my brother and sister, they
23 did.

24 Q. Who is your brother?

25 A. Dale Earnhardt, Jr.

1 Q. What has he done in racing?

2 A. Ou know, me and him actually
3 started racing together in the street
4 stock division, and then progressed up to
5 late models and he has won championships
6 in NASCAR Busch Series and compete and a
7 lot of wins in the NASCAR Sprint Cup
8 Series.

9 Q. Has he won any races in the Sprint
10 Cup Series this year?

11 A. Yes, sir, he has.

12 Q. Which ones?

13 A. I can't remember exactly which
14 ones, but I know he has won some races.

15 Q. Has he won the Daytona 500?

16 A. Yes, he has.

17 Q. And you also mentioned Kelley. Is
18 that your sister?

19 A. Yeah.

20 Q. And she was a racer, too?

21 A. Yeah. She actually started out
22 street stocks. It wasn't at the time me
23 and Dale, Jr. did. It was a little later.
24 She started in street stocks, and
25 then in 1994 I believe it was, me and

1 Kelley and Dale, Jr. all three started
2 racing together in late model series with
3 Dale Earnhardt, Inc. under the Chance 2
4 brand.

5 Q. And so is that the -- have we
6 covered all the bases for the third
7 generation of Earnhardt racers?

8 A. Yes, sir.

9 Q. Is there a fourth generation?

10 A. Yes. That's where my son Jeffrey
11 Earnhardt comes in, and also Kelley has
12 two daughters, Kennedy and Karsyn. They
13 also race, too.

14 Q. And your son, Jeffrey, where does
15 he race these days?

16 A. He has raced -- these days he is
17 racing in NASCAR Nationwide Series, but he
18 has also raced in the Craftsman Truck
19 Series in the Busch E Series, also.

20 Q. Did you ever hear race fans yell
21 Earnhardt, just that last name by itself
22 at your father?

23 A. Yes, sir.

24 Q. How about at you?

25 A. Yes, sir.

1 Q. How about at your brother, Dale,
2 Jr.?

3 A. Yes, sir.

4 Q. Anybody else?

5 A. Matter of fact, just this past
6 race at Charlotte, when Jeffrey comes
7 across the stage, they also yell Earnhardt
8 for him. It's pretty neat to hear.

9 Q. Has your name, Kerry Earnhardt,
10 ever been registered as a trademark?

11 A. Yes, sir.

12 Q. Do you recall when that was done?

13 A. I believe it was in 2003.

14 Q. And who were you driving for at
15 that time?

16 A. That would be I guess Armando Fitz
17 and Terry Bradshaw, Fitz Bradshaw Racing.

18 Q. When you say Bradshaw, that's NFL
19 Hall of Fame quarterback, Terry Bradshaw,
20 his race team?

21 A. Yes, sir.

22 Q. And what is DEI?

23 A. DEI is a company my dad built, and
24 it was a big race company. He had
25 two Nationwide -- NASCAR Busch Series

1 teams. He actually was one of the first
2 Craftsmen Truck Series that started out
3 when they came out with the Truck Series.

4 Then he also had some Sprint Cup
5 teams with Steve Park and later came
6 Martin Trues, Dale, Jr. or Dale, Jr.,
7 Martin Truex. I think there was another
8 one, but I can't remember who it was --

9 Q. Maybe Aric Almirola?

10 A. Aric Almirola, yes.

11 Q. Truex and Almirola, they joined
12 that team after your father was killed in
13 2001, is that right?

14 A. Yes, sir.

15 Q. And when I say DEI, that stands
16 for Dale Earnhardt, Inc., right?

17 A. Right.

18 Q. And after your father was killed
19 in 2001, who then became the owner of DEI?

20 MR. ROSE: Objection to form.

21 THE WITNESS: Teresa Earnhardt.

22 BY MR. DAVIS:

23 Q. Did DEI support your use of the
24 Kerry Earnhardt trademark?

25 A. Yes, they did.

1 Q. And how did they do that?

2 A. Dale Earnhardt, Inc. managed all
3 my licensing and my brand -- my image of
4 Kerry Earnhardt.

5 Q. That included after 2001 as well?

6 A. Yes, sir.

7 Q. Did Teresa Earnhardt object to you
8 using your name, Kerry Earnhardt, as a
9 trademark?

10 MR. ROSE: Objection to form.

11 THE WITNESS: Never has.

12 BY MR. DAVIS:

13 Q. Have you licensed the Kerry
14 Earnhardt trademark to sponsors?

15 A. Yes, sir, I have.

16 Q. Which ones?

17 A. To name a few would be Super Cuts,
18 Nationwide, 10-10-220, Bass Pro Shops, the
19 National Wild Turkey Federation, the NRA.
20 There could be several more.

21 Q. Okay. Let's maybe break those
22 down into two different categories. Some
23 of those sponsors, were they race team
24 sponsors?

25 A. Yes.

1 Q. And other sponsors were personal
2 sponsors, is that right?

3 A. Yes, sir.

4 Q. And sometimes people say PSA.
5 What does PSA stand for?

6 A. Personal service agreement.
7 That's kind of you represent their brand,
8 such as Smith & Wesson. I had a PSA with
9 them, and also they was a sponsor on one
10 of my race cars.

11 Q. Let's take that 2003 year for
12 example when you were racing for the Fitz
13 Bradshaw outfit, okay.

14 A. Yes, sir.

15 Q. Who were the team sponsors that
16 year?

17 A. We had several. They were Super
18 Cuts, 10-10-220, Hot Tamales, Jani-King,
19 Luminous. That's so far back I about
20 forgot now, too many concussions.

21 Q. Alright. And you also mentioned
22 some personal sponsors. Can you list
23 those for us, please?

24 A. Is that like the PSA part?

25 Q. That's right.

1 A. That would be Bass Pro Shops,
2 which still exists today, Team RealTree,
3 Smith & Wesson.

4 Q. Just for example, the last --

5 A. That was just a few of the ones I
6 know of right now.

7 Q. Those last three were outdoor
8 companies, is that right?

9 A. Yes.

10 Q. Did these sponsors use the Kerry
11 Earnhardt trademark in their marketing
12 campaigns?

13 MR. ROSE: Objection to form.

14 THE WITNESS: Yes, sir.

15 BY MR. DAVIS:

16 Q. Did you make personal appearances
17 for sponsors?

18 A. Yes, sir.

19 Q. Where did you make appearances?

20 A. We done like, for example, the
21 Bass Pro, we did all their grand openings
22 of the new stores, and then we also do on
23 race weeks, we go into the Bass Pro
24 stores. That's when I was racing and
25 would be part of that appearance during

1 that whole week.

2 Q. And did you appear in commercials
3 on behalf of sponsors?

4 A. Yes, sir.

5 Q. And were those commercials
6 distributed to the public at large?

7 A. Yes, sir.

8 Q. In what form were they
9 distributed?

10 A. There was a lot of print and then
11 there is commercials with the Super Cuts
12 and 10-10-220, which is very fun because I
13 did them with Terry Bradshaw, and I mean
14 what a character, and then also in radio.

15 Q. Did you make personal appearances
16 with Terry Bradshaw?

17 A. Yes, sir.

18 Q. Did you ever license the Kerry
19 Earnhardt trademark to manufacturers in
20 connection with items that were sold to
21 the public?

22 MR. ROSE: Objection to the form,
23 leading.

24 THE WITNESS: Yes, sir, I did.

25 BY MR. DAVIS:

1 Q. What kinds of items?

2 A. We had like die-cast, T-Shirts.
3 We had, like I said, handguns. We had a
4 lot of camo apparel with their license on
5 it. I believe that's about it.

6 Q. Alright, any outdoor related
7 hunting or fishing type products that
8 were -- that you licensed to manufacturers
9 to sell to the public?

10 MR. ROSE: Objection to the form.

11 THE WITNESS: Oh, yeah. Like I
12 said, the Smith & Wesson handguns and camo
13 with Team RealTree, and then also fish and
14 bait companies.

15 BY MR. DAVIS:

16 Q. Did your trademark appear on those
17 items?

18 MR. ROSE: Objection to form.

19 THE WITNESS: Yes, sir, they sure
20 did.

21 BY MR. DAVIS:

22 Q. And who would be the purchasers of
23 those items?

24 A. You know, of course, with the
25 handguns it would be any shoot enthusiast

1 in love with the outdoors.

2 And then the camo a lot of people
3 are big into wearing the camo with
4 outdoors, you know, love and passion for
5 outdoors, and then the fishing would be
6 people in fishing.

7 Q. Mr. Earnhardt, how would you
8 describe your relationship with your
9 father, Dale Earnhardt?

10 A. It was very strong. You know, we
11 had a real close relationship until the
12 time we lost him, and it was -- I'm very
13 emotional now, but a lot of times just
14 being together working on cars or riding
15 around the farm, pointing out wildlife and
16 showing me things that he is building or
17 roads he is making across the farm or
18 times we are in the field dove hunting or
19 we also do some deer hunts and the stories
20 we would share when we would get back
21 together because he would be in one stand
22 and I would be in another stand on the
23 piece of property.

24 Q. Generally, did your father support
25 your efforts to make a name for yourself?

1 A. I feel he did, yes.

2 Q. Can you give any examples of that?

3 A. You know, he always was supportive
4 of anything I did, whether I went and
5 worked at the dealership or racing for
6 other teams.

7 I raced for the Channel Lock Team
8 in 1998 and '99, and he always had given
9 me advice as far as decisions or things to
10 put my name on and stuff like that.

11 Q. Did your father support your
12 commercial use of the Earnhardt name?

13 MR. ROSE: Objection to form.

14 THE WITNESS: Yes, sir, because he
15 never disagreed with anything I did with
16 my name.

17 BY MR. DAVIS:

18 Q. Did he encourage you to use the
19 Earnhardt name?

20 MR. ROSE: Objection to form.

21 THE WITNESS: Yes, he did.

22 BY MR. DAVIS:

23 Q. Did your father ever put any
24 restrictions on your use of the Earnhardt
25 name?

1 MR. ROSE: Objection.

2 THE WITNESS: Never. As a matter
3 of fact, if I could go back. I have to go
4 back to I lived with my father until I was
5 three years old.

6 Then I was adopted out to my
7 step-dad, Jack Key, and my name changed to
8 Key.

9 And then when I turned 16, me and
10 my father started getting time together
11 again and building our relationship back.

12 It was actually I talked to him
13 about changing my name back because that's
14 who I am. I was born an Earnhardt and I
15 felt that I had the right to own that name
16 and be part of me, and he was all for it.

17 He actually hooked me up with the
18 lawyer and helped me through all the
19 process with the lawyers to have my name
20 changed back to Earnhardt.

21 BY MR. DAVIS:

22 Q. Did he encourage you to use that
23 name in connection with your racing
24 career?

25 A. Yes, sir. And actually we did

1 race -- I was still under the name Key,
2 but in racing my name was Earnhardt before
3 I changed it back, under Dale Earnhardt,
4 Inc.

5 Q. And who were you driving for at
6 the time?

7 A. Dale Earnhardt, Inc.

8 Q. And Mr. Earnhardt, how would you
9 describe your relationship with your
10 step-mom, Teresa?

11 A. I think today describes that.

12 Q. Do you have a relationship with
13 her?

14 A. No, sir.

15 Q. You say describes that. What do
16 you mean by that?

17 A. Just me and my wife trying to
18 build a brand for our family and
19 everything and then for her to come and
20 oppose it. I don't think if you had a
21 relationship that any family member would
22 do that.

23 MR. DAVIS: That's all the
24 questions I have at this time.

25 MR. ROSE: Let's take a little

1 break and then we will have our questions.

2 (Off-the-record, brief recess.)

3 CROSS-EXAMINATION

4 BY MR. ROSE:

5 Q. Welcome back, Mr. Earnhardt.

6 A. Thank you.

7 Q. I just have a few questions in
8 follow-up.

9 When did you and your wife begin
10 your efforts with regard to outdoor homes
11 and furnishings?

12 A. I mean, that could go way back.
13 We purchased our home in 2001, and we have
14 always incorporated since then things from
15 the outdoors in, and then this opportunity
16 with the Schumacher Homes came about
17 and --

18 Q. When did the opportunity with
19 Schumacher Homes come about?

20 A. About four years ago.

21 Q. Before the opportunity with
22 Schumacher Homes came about, you and your
23 wife had already undertaken plans to
24 develop a brand regarding homes and
25 furnishings, right?

1 A. Yes, sir.

2 Q. So that had been going on for
3 sometime and then the Schumacher
4 opportunity came along, right?

5 A. Right.

6 Q. And before the opportunity of
7 Schumacher Homes came along, you were
8 developing a brand for The Kerry Earnhardt
9 Collection, right?

10 A. No, sir. It was The Earnhardt
11 Collection. We were building a brand for
12 the Earnhardt brand and outdoors.

13 Q. You haven't seen any materials
14 that refer to The Kerry and Rene Earnhardt
15 Collection?

16 A. As it relates to?

17 Q. Homes or furnishings?

18 A. Yes, I have.

19 Q. And then you met with the
20 Schumacher folks and then you began
21 promoting The Earnhardt Collection without
22 either Kerry or Rene in connection with
23 that, isn't that right?

24 A. Yes, sir.

25 Q. Were you at the meeting when that

1 decision was made?

2 A. Well, like I say, I was involved
3 in the decision making of that brand, yes,
4 I was.

5 Q. At whose suggestion at the meeting
6 was it to switch from using Kerry and Rene
7 Earnhardt Collection to just Earnhardt
8 Collection?

9 MR. DAVIS: Objection to form.

10 THE WITNESS: Through the meeting
11 it was just that the Kerry and Rene Family
12 Earnhardt Collection was just too broad
13 and it just didn't work right, and The
14 Earnhardt Collection fit better for all
15 our marketing, and plus it's something we
16 are building for our future with our
17 children.

18 BY MR. ROSE:

19 Q. I appreciate that. My question
20 was, whose decision was that?

21 A. It was a collaboration of myself
22 and my wife's.

23 Q. Who all was at the meeting when
24 that decision was made?

25 A. It was me and my wife and our

1 representative, Joe Hedrick.

2 Q. Who was there on behalf of
3 Schumacher Homes?

4 A. I think you have to go back to my
5 wife with that because she worked with
6 them more than I did.

7 Q. And how long before the meeting or
8 the opportunity with Schumacher Homes had
9 you been promoting the use of Kerry and
10 Rene Earnhardt Collection?

11 MR. DAVIS: Objection to form.

12 THE WITNESS: We really have not
13 promoted it. Like I said, we was building
14 our brand with TV shows that we were doing
15 with hunting and fishing and stuff and the
16 outdoors.

17 BY MR. ROSE:

18 Q. You used to work for Dale
19 Earnhardt, Inc., is that right?

20 A. Yes, sir.

21 Q. For what period of time did you
22 work there?

23 A. I worked there off and on with
24 racing for my dad and under Dale
25 Earnhardt, Inc., and then I became

1 full-time employed in 2007 through 2011.

2 Q. What was your role as a full-time
3 employee?

4 A. I was a liaison between the
5 management and the employees and done test
6 driving for the Cup teams. We always do a
7 lot of testing with bodies or engines that
8 they were trying, and a lot of different
9 things.

10 Q. Did you have any responsibilities
11 as far as developing marketing or branding
12 opportunities?

13 A. I don't know if I would say
14 responsibilities. I was asked opinions.

15 Q. Was it part of your job to do
16 that?

17 A. Yeah, I was involved in some
18 things.

19 Q. And what things did you -- what
20 did you do in that part of your job?

21 A. You know, we done some stuff with
22 the SS Camaros that I got caught in on to
23 try to clean up some stuff that happened
24 there.

25 Then I was involved in stuff with

1 farm equipment, lawn equipment and worked
2 with the companies on that to help get the
3 products closed in.

4 Q. And you said your employment ended
5 there in 2011, is that right?

6 A. Yes, sir.

7 Q. So that was after you began your
8 discussions with Schumacher Homes, is that
9 right?

10 A. I think it was kind of during the
11 same time.

12 Q. So I guess my question wasn't
13 clear. You were in discussions with
14 Schumacher Homes about that opportunity
15 while you were still at Dale Earnhardt,
16 Inc., is that right?

17 A. Yes, sir.

18 Q. Did you share that with the folks
19 at Dale Earnhardt, Inc.?

20 A. I tried to meet with Teresa on
21 numerous things and never had the
22 opportunity because it just never
23 happened.

24 Q. Did you tell anybody else at Dale
25 Earnhardt, Inc.?

1 A. I don't think there was anyone
2 else to talk to besides Teresa about it.

3 Q. Did you have any involvement with
4 The Dale Earnhardt Foundation?

5 A. Yes, sir I did.

6 Q. What was your involvement with The
7 Dale Earnhardt Foundation?

8 A. I set up poker tournaments in
9 Vegas to raise funds for the foundation,
10 and it was all 100 percent proceeds went
11 back to the foundation. I done that for
12 several years.

13 Q. Did you ever go to appearances on
14 behalf of the foundation?

15 A. No, sir.

16 Q. You are familiar with what the
17 foundation does, right?

18 A. I am familiar with the mission
19 statement that -- I have never seen
20 anything done with, yes.

21 Q. And you understand that part of
22 that mission statement deals with wildlife
23 and the outdoors?

24 A. Sure.

25 Q. And Dale was known, Dale

1 Earnhardt, your father, was known, well
2 known as an outdoorsman, right?

3 A. I think he is more well known as a
4 racer. I knew he loved outdoors because
5 we did things in outdoors together.

6 Q. He appeared on many hunting and
7 fishing shows?

8 A. I don't think -- maybe a few, one
9 or two. I can't recall any myself.

10 Q. Do you recall any shows where he
11 and Richard Childress appeared?

12 A. I think there was one with Team
13 RealTree maybe.

14 Q. He also, Dale Earnhardt, was a
15 sponsor in relation to guns as well,
16 right?

17 A. I think they had a sponsor on a
18 race team as Remington.

19 Q. And also Bass Pro with regards to
20 fishing and boating?

21 A. I think that came after dad,
22 because that was Martin Truex sponsorship.

23 Q. But was Dale ever involved with
24 any sponsorship involving Bass Pro Shops?

25 A. He may have been.

1 Q. And are you familiar with --
2 strike that.

3 Did you attend the ceremony when
4 the Dale Earnhardt statue was dedicated in
5 Kannapolis?

6 A. Yes, sir, I did.

7 Q. Kannapolis is well known as the
8 home of Dale Earnhardt, isn't it?

9 A. Yeah, he grew up there, so did I,
10 and we got to think that the statue was
11 put in memory of him after his passing.

12 Q. How many -- you discussed earlier
13 today your involvement in Sprint Cup level
14 racing.

15 A. Yes, sir.

16 Q. How many races did you run in the
17 Sprint Cup level?

18 A. I know I raced one with dad with
19 Dave Marcus. That was in Michigan.
20 Actually I qualified dad. That was pretty
21 cool. Then I know, I think I have done
22 probably 12 with Richard Childress Racing.

23 Q. When you talk about your successes
24 in racing, would you say most of your
25 successes came while you were racing for

1 DEI?

2 A. Yes, sir.

3 Q. And you talked about your father
4 promoting your use of your name and your
5 brand. He promoted you using Kerry
6 Earnhardt, correct?

7 A. Correct in racing, yes.

8 Q. Well, and also in branding, he
9 promoted you using the phrase, Kerry
10 Earnhardt, correct?

11 A. We did all that in racing.

12 MR. ROSE: I don't have anything
13 further. Thank you.

14 MR. DAVIS: Thank you.

15 (Signature reserved.)

16 (Whereupon, at 11:03 a.m., the
17 taking of the instant deposition ceased.)

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1 ERRATA SHEET

2 RE: TERESA H. EARNHARDT V. KERRY
3 EARNHARDT, INC.

4 DEPOSITION OF: KERRY DALE EARNHARDT

5 Please read this original deposition
6 with care, and if you find any corrections
7 or changes you wish made, list them by
8 page number, line number and state reason
9 for change below. DO NOT WRITE IN THE
10 DEPOSITION ITSELF. Return the deposition
11 to this office after it is signed. We
12 would appreciate your prompt attention to
13 this matter.

14 To assist you in making any such
15 corrections, please use the form below.
16 If supplemental or additional pages are
17 necessary, please furnish same and attach
18 them to this errata sheet.

19 Page 8 Line 2 should
20 Read: "selection" instead of "collection"
21 Reason for change transcription error

22 Page 12 Line 6 should
23 Read: "dad ends up" instead of "dad's end up"
24 Reason for change transcription error

25

1 Page 16 Line 2 should
2 Read: "You" instead of "On"
3 Reason for change transcription error
4 Page 16 Line 6 should
5 Read: "Competed and had a" instead of "compete and a"
6 Reason for change transcription error
7 Page 19 Line 6 should
8 Read: "Truex" instead of "Trues"
9 Reason for change transcription error
10 Page 24 Line 25 should
11 Read: "shooting" instead of "shoot"
12 Reason for change transcription error
13 Page 33 Line 22 should
14 Read: "brought" instead of "caught"
15 Reason for change transcription error
16 Page 37 Line 20 should
17 Read: "out-qualified" instead of "qualified"
18 Reason for change Clarification
19 Page ____ Line ____ should
20 Read: ____
21 Reason for change ____
22 Page ____ Line ____ should
23 Read: ____
24 Reason for change ____
25

1 Page ____ Line ____ should
2 Read: _____
3 Reason for change _____
4 Page ____ Line ____ should
5 Read: _____
6 Reason for change _____
7 Page ____ Line ____ should
8 Read: _____
9 Reason for change _____
10 Page ____ Line ____ should
11 Read: _____
12 Reason for change _____
13 Page ____ Line ____ should
14 Read: _____
15 Reason for change _____

16 Kerry D. Earnhardt
17 Signature of Witness

18 SUBSCRIBED and SWORN TO before me this
19 19 day of November, 2014.

20 Donale C. Matthews
21 NOTARY PUBLIC

22 My Commission expires: 10/05/2016
23
24
25

1 CERTIFICATE OF REPORTER

2 STATE OF NORTH CAROLINA}

3 COUNTY OF MECKLENBURG }

4 I, Andrea L. Nobrega, the officer
5 before whom the foregoing deposition was
6 taken, do hereby certify that the witness
7 whose testimony appears in the foregoing
8 deposition was duly sworn by me; that the
9 testimony of said witness was taken by me
10 to the best of my ability and thereafter
11 reduced to typewriting under my direction;
12 that I am neither counsel for, related to,
13 nor employed by any of the parties to the
14 action in which this deposition was taken,
15 and further that I am not a relative or
16 employee of any attorney or counsel
17 employed by the parties thereto, nor
18 financially or otherwise interested in the
19 outcome of the action.

Andrea L. Nobrega

20
21 ANDREA L. NOBREGA
22 Court Reporter and Notary
23 Public for North Carolina
24

25 My Commission expires: 11-25-16